

§ 1.63-2

(e) *Effective date.* This section applies to taxable years beginning after 1976.

[T.D. 7585, 44 FR 1105, Jan. 4, 1979]

§ 1.63-2 Cross reference.

For rules with respect to charitable contribution deductions for nonitemizing taxpayers, see section 63 (b)(1)(C) and (i) and section 170(i) of the Internal Revenue Code of 1954.

(Secs. 170(a)(1) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 58, 26 U.S.C. 170(a)(1); 68A Stat. 917, 26 U.S.C. 7805)

[T.D. 8002, 49 FR 50666, Dec. 31, 1984]

§ 1.66-1 Treatment of community income.

(a) *In general.* Married individuals domiciled in a community property state who do not elect to file a joint individual Federal income tax return under section 6013 generally must report half of the total community income earned by the spouses during the taxable year except at times when one of the following exceptions applies:

(1) The spouses live apart and meet the qualifications of § 1.66-2.

(2) The Secretary denies a spouse the Federal income tax benefits resulting from community property law under § 1.66-3, because that spouse acted as if solely entitled to the income and failed to notify his or her spouse of the nature and amount of the income prior to the due date for the filing of his or her spouse's return.

(3) A requesting spouse qualifies for traditional relief from the Federal income tax liability resulting from the operation of community property law under § 1.66-4(a).

(4) A requesting spouse qualifies for equitable relief from the Federal income tax liability resulting from the operation of community property law under § 1.66-4(b).

(b) *Applicability.* (1) The rules of this section apply only to community income, as defined by state law. The rules of this section do not apply to income that is not community income. Thus, the rules of this section do not apply to income from property that was formerly community property, but in accordance with state law, has ceased to be community property, becoming, e.g., separate property or prop-

26 CFR Ch. I (4-1-14 Edition)

erty held by joint tenancy or tenancy in common.

(2) When taxpayers report income under paragraph (a) of this section, *all* community income for the calendar year is treated in accordance with the rules provided by section 879(a). Unlike the other provisions under section 66, section 66(a) does not permit inclusion on an item-by-item basis.

(c) *Transferee liability.* The provisions of section 66 do not negate liability that arises under the operation of other laws. Therefore, a spouse who is not subject to Federal income tax on community income may nevertheless remain liable for the unpaid tax (including additions to tax, penalties, and interest) to the extent provided by Federal or state transferee liability or property laws (other than community property laws). For the rules regarding the liability of transferees, see sections 6901 through 6904 and the regulations thereunder.

[T.D. 9074, 68 FR 41070, July 10, 2003]

§ 1.66-2 Treatment of community income where spouses live apart.

(a) Community income of spouses domiciled in a community property state will be treated in accordance with the rules provided by section 879(a) if all of the following requirements are satisfied—

(1) The spouses are married to each other at any time during the calendar year;

(2) The spouses live apart at all times during the calendar year;

(3) The spouses do not file a joint return with each other for a taxable year beginning or ending in the calendar year;

(4) One or both spouses have earned income that is community income for the calendar year; and

(5) No portion of such earned income is transferred (directly or indirectly) between such spouses before the close of the calendar year.

(b) *Living apart.* For purposes of this section, living apart requires that spouses maintain separate residences. Spouses who maintain separate residences due to temporary absences are not considered to be living apart. Spouses who are not members of the same household under § 1.6015-3(b) are